

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

em/APB

Mailed: August 11, 2004

Cancellation No. 92041630

420 Gear, Inc.

v.

John Marvin Rowland

**By the Trademark Trial and Appeal Board:**

On July 6, 2004, respondent filed a "motion for summary judgement."<sup>1</sup> A review of respondent's motion, however, indicates however that it does not include proof of service upon petitioner, as is required by Trademark Rule 2.119(a). Accordingly, the motion will receive no consideration.

It is noted by the Board that petitioner's time for filing a brief on the case has expired, and no brief has been filed. Trademark Rule 2.128(a)(3) provides that when a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than 15 days, in which to show cause why the Board should not treat such failure as a concession of the case. The rule further provides that if plaintiff fails to file a response to the order, or files a response indicating that it has lost

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<sup>1</sup> A cursory review of the motion indicates that it is actually a motion to dismiss for failure to prosecute under Trademark Rule 2.132(a).

interest in the case, judgment may be entered against plaintiff.

In view of the above, petitioner is allowed until **thirty days** from the mailing date of this order to show cause why the Board should not treat its failure to file a brief as a concession of the case, failing which a judgment dismissing the petition for cancellation with prejudice will be entered against petitioner.<sup>2</sup>

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<sup>2</sup> Even if petitioner is able to show cause why judgment should not be entered against it, the Board notes that petitioner does not appear to have taken any testimony and did not file any evidence during its testimony period. Accordingly, dismissal of this case may be appropriate based on petitioner's failure to prosecute. See Trademark Rule 2.132(a). The exhibits that petitioner submitted with its petition to cancel are not properly of record because they were not introduced in evidence during petitioner's testimony period. See Trademark Rule 2.122(c).